



U.S. Department of Justice

United States Attorney
Eastern District of New York

RECEIVED
12/2/10
Chambers of
I. Leo Glasser
U.S.D.J.

EK:TK
F.#1998R01996

271 Cadman Plaza East
Brooklyn, New York 11201

December 2, 2010

TO BE FILED UNDER SEAL

The Honorable I. Leo Glasser
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Felix Sater
Criminal Docket No. 98 CR 1101 (ILG)

Dear Judge Glasser:

The government writes in response to Mr. Oberlander's November 23, 2010 letter. In that letter, Mr. Oberlander argues that the issue as to whether the Court has the authority to order the return of the sealed documents in question and enjoin Mr. Oberlander from disseminating those documents is moot in light of the fact that Mr. Sater's cooperation was previously disclosed through the unsealing of a document in a related case. The government hereby moves to reseat the document mentioning Mr. Sater's cooperation. Additionally, as discussed further below, the revelation of the previous disclosure does not alter the government's position that Mr. Oberlander should be ordered to return the sealed documents in his possession.

I. Factual Background

On March 18, 2009, the government moved to unseat the court file in United States v. Salvatore Lauria, 98 CR 1102 (ILG). The government did so in hopes of determining the status of a case that, despite its age, appeared to remain open and unresolved. The Honorable Roanne L. Mann granted the government's unsealing request on the same day. While it is normally the government's practice to immediately move to reseat the court file following the retrieval of the necessary information, the government inadvertently failed to do so in this instance. The prosecutor who moved to unseat the court file was

unfamiliar with Mr. Sater's case and never realized that the file contained the April 29, 2002 letter.

II. Argument

A. The Court Should Reseal the April 29, 2002 Letter

The government has attached a proposed order to reseal the April 29, 2002 letter. The letter should be resealed because its contents place Mr. Sater and his family in danger. As the Court is aware, Mr. Sater cooperated against dangerous individuals in multiple arenas. Protecting Mr. Sater and his family is a valid ground upon which the Court can seal this document. See United States v. Doe, 63 F.3d 121, 128 (2d Cir. 1995) (holding that "danger to persons or property" is a "compelling interest" that weighs in favor of sealing.). While the fact that the letter has remained unsealed since March 2009 is less than ideal, there is no reason that the threat to Mr. Sater's safety should be amplified by having this letter remain in public view. Of course, the fact that no person has acted on this information does not support the proposition that Mr. Sater is currently not in danger. Although Mr. Sater may have been lucky that this letter was not discovered by people who mean to do him harm, he should not have to rely on luck going forward.

B. The Government Reaffirms its Previous Position With Respect to the Sealed Documents

Despite the inadvertent unsealing of the April 29, 2002 letter, the Court should still order Mr. Oberlander to return the sealed documents in the above-captioned case and enjoin him from disseminating those documents. Mr. Oberlander's possession of the sealed documents continues to frustrate the Court's underlying sealing order regardless of what other documents he possesses. To begin with, the sealed documents contain detailed information that goes far beyond the brief mention of Mr. Sater's cooperation in the April 29, 2002 letter. Moreover, the existence of the April 29, 2002 letter does not affect the improper manner in which the sealed documents were obtained - Mr. Oberlander has no more right now to these documents than he did before the discovery of the letter. If Mr. Oberlander wishes to move to unseal the documents in question and argue that, in light of the April 29, 2002 letter, there are no longer valid grounds to keep the documents under seal, he is free to do so. However, a Court's sealing order does not evaporate when information contained in the sealed documents comes to light from a different source. The Court's sealing order must still be respected and

enforced, and the return of the sealed documents at issue is therefore warranted.

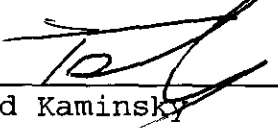
III. Conclusion

For the foregoing reasons, the Court should reseal the April 29, 2002 letter from United States v. Salvatore Lauria, 98 CR 1102 (ILG), and order Mr. Oberlander to return the sealed documents in the above-captioned case and enjoin him from disseminating those documents. The government also requests that this letter be filed under seal.

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney
Eastern District of New York

By: _____


Todd Kaminsky
Elizabeth J. Kramer
Assistant United States Attorney

cc.: Kelly A. Moore, Esq.
Frederick Oberlander, Esq.
Richard E. Lerner, Esq.